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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

Commission Opens Inquiry On)
Competitive Bidding Process for)
Report to Congress)

WT Docket No. 97-150

To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
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August 1, 1997

The American Mobile Telecommunications Association ("AMTA" or "Association") hereby files its Comments in response to the Federal Communications Commission ("FCC" or "Commission") statutorily-required inquiry regarding the use of competitive bidding to award licenses.¹ As detailed in the Notice, in conjunction with granting the FCC authority to award licenses by competitive bidding under certain circumstances, Congress obligated the Commission to conduct a public inquiry in respect to specified auction-related issues, and to submit a report on the results of that inquiry to Congress by September 30, 1997. The instant Public Notice seeks input on the matters Congress has indicated must be addressed in the FCC's report.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and the 450-512 MHz bands. These members provide commercial wireless services throughout the country. Many already have participated in FCC auctions; most assume that they will need to do so in the future if they wish to acquire additional spectrum to expand their businesses. Therefore, AMTA's members have a significant, direct interest in the outcome of this and the various other FCC proceedings in which aspects of the Commission's competitive bidding processes are under consideration.

¹ Public Notice, "Commission Opens Inquiry on Competitive Bidding Process for Report to Congress", WT Docket No. 97-150, FCC 97-232, 12 FCC Rcd ____ (rel. July 2, 1997) ("Public Notice" or "Notice").

II. BACKGROUND

2. AMTA has participated already in a number of Commission proceedings in which issues relating to wireless auctions have been addressed. It has commented generally on the FCC's overall auction authority.² Additionally, the Association has submitted comments on the FCC's specific auction processes in the 800 MHz³, 900 MHz⁴ and 220 MHz⁵ bands. It also has commented on the FCC's proposed "generic" auction rules⁶, on proposals to modify the broadband Personal Communications Service ("PCS") C and F Block installment payment issues⁷, and on FCC-related small business issues, including auctions.⁸ The instant Public Notice indicates that the FCC intends to consider the record in various proceedings in preparing its Congressional report. AMTA specifically requests that its comments in the auction-related proceedings cited herein be incorporated by reference and, therefore, does not believe it either necessary or productive to reiterate the Association's positions as detailed in those filings.

² AMTA Comments, Further Notice of Proposed Rulemaking, PR Docket No. 93-252 (June 20, 1994) (CMRS Proceeding).

³ AMTA Reply Comments, Further Notice of Proposed Rulemaking, PR Docket NO. 93-144 (Mar. 1, 1995) (800 MHz Proceeding).

⁴ AMTA Comments, Second Further Notice of Proposed Rulemaking, PR Docket No. 89-553 (May 24, 1995) (900 MHz Proceeding).

⁵ AMTA Comments, Third Report and Order, Fifth Notice of Proposed Rulemaking, PR Docket No. 89-552 (Apr. 15, 1997) (220 MHz Proceeding).

⁶ AMTA Comments, Memorandum Opinion and Order and Notice of Proposed Rule Making, WT Docket No 97-82, FCC 97-60 (March 27, 1997) (Part 1 Rewrite).

⁷ AMTA Reply Comments, Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," DA 97-82, 12 FCC Rcd ____ (rel. July 8, 1997)

⁸ AMTA Comments, Notice of Inquiry, GN Docket No. 96-113 (Sept. 27, 1996).

3. Instead, AMTA will limit its comments to an issue Congress considered highly significant in an evaluation of the success or failure of the FCC's competitive bidding procedures: do auctions ensure that small businesses are given the opportunity to participate in the provision of spectrum based services.⁹ The Association agrees with Congress that the presence, or absence, of meaningful opportunities for small businesses is of paramount importance in assessing the impact of the FCC's auction authority. AMTA would note further that such opportunities are particularly critical when, as in the 800 MHz, 900 MHz and 220 MHz SMR services, the spectrum on which small businesses are bidding typically is "white space" on spectrum on which they already are operating. Should the FCC's rules fail to provide viable auction opportunities, they cannot comport with the agency's statutory obligations.

III. DISCUSSION

4. There invariably will be a level of tension between a fundamental purpose of any auction, including those conducted by the Commission -- to award the object of the bidding to the person willing to pay the most for it -- and the statutory directive to ensure that small business not be precluded from meaningful spectrum auction participation. A small business may genuinely value certain spectrum more than other bidders in monetary terms, and yet not have or have access to the economic resources needed to submit a winning bid. Successful bidders are those that not only place a high value on the property relative to other auction participants, but also have the financial capability to support their bids. However, since Congress has determined already that pure economic might should not be the sole determinant as to who controls all spectrum awarded by auction, the FCC's rules must reflect that decision.

⁹ See 47 C.F.R. § 309(j)(4)(D).

5. The Commission has used certain provisions in some of its auctions to promote small business participation. For example, some spectrum has been designated as an "entrepreneur's block", with auction participation limited to applicants whose financial resources fall below a specified level.¹⁰ The FCC also has adopted bidding credits and installment payments for qualified small and very small businesses in a number of auctions.¹¹ AMTA agrees that these regulatory mechanisms, to greater or lesser degrees, have facilitated small business auction participation. While only the entrepreneur's block approach actually ensures that some small business entity will win spectrum in an auction¹², installment payments and, to a lesser extent, bidding credits help small businesses overcome their inherent financial handicap. Each of these provisions has been used successfully by some applicants in some competitive bidding situations to produce small business auction winners. However, AMTA believes the FCC is statutorily empowered to do more for small business.

6. The Public Notice states that fifty-four percent (54%) of licenses awarded by auction to date have been assigned to small businesses.¹³ AMTA does not dispute that figure, but must question its significance. For example, it does not indicate what percentage of the

¹⁰ See, e.g., 47 C.F.R. § 24.709 (Broadband Personal Communications Service - C and F Blocks).

¹¹ See, e.g., 47 C.F.R. §§ 22.219 (paging - small), 24.309 (Narrowband Personal Communications Service - small), 27.209 (Wireless Communications Service - small and very small), 90.811, 90.812 (900 MHz - small and very small), 90.1017 (220 MHz - small and very small).

¹² This assumes, of course, that the Commission's rules successfully preclude entities too large to participate from securing the spectrum by bidding through an applicant which is small enough to qualify but which is under the de facto control of the unqualified entity.

¹³ Notice at 5.

spectrum assigned to date by auction has gone to small businesses, only the percentage of licenses awarded. Each 900 MHz SMR authorization granted pursuant to competitive bidding entitled the licensee to operate on 250 kHz of spectrum. By contrast, each PCS A and B Block winner was awarded 30 MHz of spectrum. Small businesses had some level of success in the former auction, at least outside of the major metropolitan areas, but were a non-factor in the latter.

7. Moreover, some might question whether the FCC's definition of small business in certain auction situations is necessarily consistent with Congress' expectation of the size of the small businesses about which it was concerned. AMTA agrees with the FCC's decision that small business auction provisions should be tailored to the service to be provided, including the likely infrastructure costs in light of any construction or service obligations. Nonetheless, this eminently reasonable approach means that some of the fifty-four percent (54%) of the licenses awarded to "small businesses" have been issued to companies with average gross revenues of up to \$40 Million over the preceding three years.¹⁴

8. It is unlikely that companies with those revenue levels were the small businesses Congress had in mind when drafting Section 309(f)(4)(D). By comparison, half of those members that responded to the Association's survey regarding market entry barriers for small businesses reported annual gross revenues of less than \$1 Million, and all reported revenues of less than \$15 Million.¹⁵ Companies with such limited resources are not likely to be successful bidders against competitors with forty (40) times their average gross revenue. Yet, under the

¹⁴ 47 C.F.R. § 27.210(b)(1).

¹⁵ AMTA Comments, Notice of Inquiry, GN Docket No. 96-113 (Sept. 27, 1996).

Commission's analysis, all would be classified as small business. It is not possible, therefore, to assess without further investigation the actual degree of successful small business participation in the Commission's auction processes.

9. Because AMTA believes the FCC needs to, indeed is under Congressional mandate to, do more to promote meaningful small business participation, the Association is particularly troubled by the Commission's recent retrenchment from its earlier support of installment payments. AMTA has advised the FCC previously that the Association's members consider installment payments an essential component of a regulatory scheme that enables truly small businesses to participate in auctions.¹⁶ The ability to pay for spectrum over time enables companies with limited internal resources and external financing options to fund their payments out of revenues that come when spectrum is constructed and used to provide service to the public. It is a financing vehicle available in the acquisition of most goods and services in the general marketplace, and helps small companies compete successfully against their larger counterparts.

10. In the Association's opinion, the Commission's recent concerns about retaining installment payments provisions are misplaced. The FCC is apparently considering the elimination of this option both because of potential defaults by auction winners and because, in retrospect, the agency has reservations about acting both as the manager of the spectrum and

¹⁶ Id. at ¶ 13.

banker to those using installment payments.¹⁷ These concerns appear to be driven largely by issues relating to the PCS C Block auction.

11. AMTA is sensitive to the FCC's concerns about its current dual-role function in the auction process. It may be preferable to assign the collection function to another agency with more extensive expertise in these areas, an agency that has no other spectrum-related obligations. However, the much-publicized, but limited problems that have arisen with respect to C Block payment defaults and potential defaults should not dictate the Commission's determination on whether or not to retain installment payment provisions generally. Auction winners in other services, notably 900 MHz SMR, have utilized FCC installment payment provisions with few, if any, problems. Each of those companies assessed what it believed the spectrum was worth, dropped out if the bidding rose too high, and, almost without exception, have been diligent about meeting their payment obligations. Unlike the start-up companies invited into the PCS C Block auction, these auction winners, for the most part, were operating small businesses with an existing investment in the spectrum on which they were bidding. Many have determined that they were successful only because the installment payment option was available. It would be contrary to the public interest and to Congressional directive to eliminate that option because of a single auction in which a discrete number of winners are having difficulty meeting their self-imposed obligations.

¹⁷ In suggesting that the Commission might examine transferring its obligation to collect payment from auction winners from the FCC to others, Chairman Hundt stated "the new businesses should have the ability to negotiate with bankers just as companies do everyday. But the FCC is ill-suited to act as a banker." "Chairman Hundt Releases 1997 FCC Agenda", News Release Notice, Dec. 26, 1996.

III. CONCLUSION

12. AMTA and, at least for the most part, its members have accepted that future spectrum needs are likely to be satisfied, if at all, in an auction. Assuming that to be the case, the Association urges the Commission to devote sufficient resources to formulate approaches that will ensure the meaningful small business participation envisioned by Congress, including, but not limited to, retention of installment payment provisions.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this August 1, 1997, caused to be hand carried a copy of the foregoing Comments to the following:

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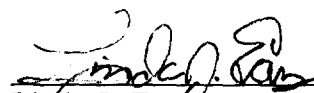
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